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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

BRITNEY BOLTON,

Plaintiff,

v.

ASSOCIATED THORACIC AND  
CARDIOVASCULAR SURGEONS,  
LTD, an Arizona company; HERMAN  
PANG, M.D., an individual, SABRINA  
LARSON, and individual, SHELLEY  
KROCZYNSKI, an individual, and  
DOES 1-10,

Defendants.

No. CaseNumber

**COLLECTIVE ACTION COMPLAINT  
FOR OVERTIME UNDER THE FLSA**

**JURY TRIAL DEMANDED**

**COLLECTIVE ACTION CIVIL COMPLAINT**

Britney Bolton ("Named Plaintiff"), on behalf of herself and those similarly situated (hereinafter referred to as "Plaintiffs"), hereby complains as follows against Defendants.

**INTRODUCTION**

1. Named Plaintiff has initiated the instant action to redress violations by Defendants of the Fair Labor Standards Act ("FLSA"). Named Plaintiff asserts that Defendants

1 failed to pay Named Plaintiff and Plaintiffs proper overtime compensation in violation of the  
2 FLSA.

### 3 JURISDICTION AND VENUE

4 2. The foregoing paragraphs are incorporated herein as if set forth in their  
5 entireties.

6 3. This Court may properly maintain personal jurisdiction over Defendants  
7 because Defendants' contacts with this state and this judicial district are sufficient for the  
8 exercise of jurisdiction over Defendants to comply with traditional notions of fair play  
9 and substantial justice.

10 4. This Court has original subject matter jurisdiction over this action pursuant to  
11 28 U.S.C. § 1331 because the claims herein arise under laws of the United States, the  
12 FLSA, 29 U.S.C. § 201 *et seq.*

13 5. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§  
14 1391(b)(1) and (b)(2), because Defendants reside in and/or conduct business in this  
15 judicial district and because a substantial part of the acts and/or omissions giving rise to the  
16 claims set forth herein occurred in this judicial district.

### 17 PARTIES

18 6. The foregoing paragraphs are incorporated herein as if set forth in their  
19 entireties.

20 7. Named Plaintiff Britney Bolton is an adult individual residing in Vacaville,  
21 California who, at all times relevant to this Complaint resided in Scottsdale, Arizona,  
22 County of Maricopa.

23 8. Defendant Associated Thoracic and Cardiovascular Surgeons, Ltd. ("ATCS")  
24 is an Arizona entity that has conducted business under the trade names Entebella,  
25 Cardiothoracic & Vascular Surgeons, Ltd., and Cardiothoracic Vascular Surgery in  
26 Maricopa County, Arizona, and that caused the events set forth in this Complaint to occur in  
27 Maricopa County, Arizona.



1           9. Defendant Herman Pang, M.D. is an individual who has at all times relevant  
2 to this Complaint caused acts and/or omissions to occur within Maricopa County, Arizona.

3           10. On information and belief, Dr. Pang acted, or failed to act, on behalf of his  
4 community at all, or at least some, times relevant to this Complaint. On information and  
5 belief, this person's name is Kimberly Sue Waterhouse. When the identity of the spouse of  
6 Dr. Pang is confirmed, this Complaint will be amended to include the spouse of Dr. Pang.

7           11. Defendant Sabrina Larson is an individual who has at all times relevant to this  
8 Complaint caused acts and/or omissions to occur within Maricopa County, Arizona.

9           12. On information and belief, Ms. Larson acted, or failed to act, on behalf of her  
10 community at all, or at least some, times relevant to this Complaint. When the identity of the  
11 spouse of Ms. Larson is confirmed, this Complaint will be amended to include the spouse of  
12 Ms. Larson.

13           13. Defendant Shelley Kroczyński is an individual who has at all times relevant to  
14 this Complaint caused acts/or omissions to occur within Maricopa County, Arizona.

15           14. Ms. Kroczyński acted, or failed to act, on behalf of her community at all times  
16 relevant to this Complaint. When the identity of the spouse of Ms. Kroczyński is confirmed,  
17 this Complaint will be amended to include the spouse of Ms. Kroczyński.

18           15. Defendants DOES 1 – 10 include the spouses of the individual Defendants  
19 named herein, if any, and also include otherwise currently unknown individuals,  
20 corporations, professional associations, or anyone else who, directly or indirectly, directed,  
21 aided, abetted, and/or assisted with creating and/or executing the policies and practices of  
22 Defendants which resulted in Defendants failing to pay Named Plaintiff and Plaintiffs  
23 proper compensation pursuant to the FLSA.

24           16. At all times relevant herein, Defendants acted by and  
25 through their agents, servants, and employees, each of whom acted at all times relevant herein  
26 in the course and scope of their employment with ATCS.

1        17. At all times relevant herein, Defendants Dr. Pang, Ms. Larson, and Ms.  
2 Kroczynski jointly: (a) exercised operational control of ATCS; (b) set the terms, conditions,  
3 and compensation of Named Plaintiff and Plaintiffs; (c) set the employment policy and  
4 procedures for ATCS; (d) had economic control over the nature and structure of the  
5 employment relationship between ATCS, on the one hand, and Named Plaintiff and  
6 Plaintiffs, on the other hand; and (e) exercised control over the nature and structure of the  
7 employment relationship between ATCS, on the one hand, and Named Plaintiff and  
8 Plaintiffs, on the other hand

9                                **FLSA COLLECTIVE ACTION ALLEGATIONS**

10        18. The foregoing paragraphs are incorporated herein as if set forth in their  
11 entireties.

12        19. Named Plaintiff brings this action under the FLSA as a collective  
13 action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all  
14 persons presently and formerly employed by ATCS subject to the unlawful pay practices  
15 and policies at ATCS described herein and who worked for ATCS at any point in the  
16 three years preceding the date the instant action was initiated (the members of this  
17 putative class are referred to as "Plaintiffs").

18        20. Named Plaintiff and Plaintiffs worked and work at different facilities of  
19 ATCS, but are subjected to the same unlawful wage policies and practices described herein.

20        21. Named Plaintiff and Plaintiffs are similarly situated, have substantially similar  
21 non-managerial job duties, have substantially similar pay provisions, and are all subject to  
22 unlawful policies and practices at ATCS as described herein.

23        22. There are numerous similarly situated current and former employees of ATCS  
24 who were compensated improperly for overtime work in violation of the FLSA and who  
25 would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the  
26 opportunity to join in the present lawsuit.



1 23. Similarly situated employees are known to ATCS, are readily identifiable by  
2 ATCS, and can be located through the records of ATCS.

3 24. Therefore, Named Plaintiff should be permitted to bring this action as a  
4 collective action for and on behalf of herself and those employees similarly situated,  
5 pursuant to the "opt-in" provisions of the FLSA, 29 U.S.C. § 216(b).

### 6 7 **FACTUAL BACKGROUND**

8 25. The foregoing paragraphs are incorporated herein as if set forth in their  
9 entireties.

10 26. Named Plaintiff worked for ATCS as an ultrasound technician from March  
11 31, 2014 through June 24, 2015.

12 27. Named Plaintiff and Plaintiffs are current and/or former ultrasound technician  
13 employees of ATCS, who within the last three years have been or are presently employed  
14 by ATCS.

15 28. Upon information and belief, ATCS maintained an unlawful wage payment  
16 system for at least the last three years, and enforced such unlawful policies at each of their  
17 facilities run under various trade names.

### 18 **EMPLOYEE MISCLASSIFICATION**

19 29. The foregoing paragraphs are incorporated herein as if set forth in their  
20 entireties.

21 30. The United States Department of Labor has long advised that employers  
22 should classify ultrasound technicians as non-exempt hourly employees entitled to  
23 overtime pay. (See [http://www.dol.gov/whd/overtime/fs17o\\_technicians.htm](http://www.dol.gov/whd/overtime/fs17o_technicians.htm)).

24 31. Named Plaintiff and Plaintiffs were not classified as non-exempt hourly  
25 employees.

37. Named Plaintiff learned for the first time in or about mid-October 2015 that she and Plaintiffs had been misclassified as exempt employees by ATCS, and that she should have been paid for all of the overtime that she was required to work..

**COUNT I**  
**Fair Labor Standards Act**  
**(Failure to pay Overtime Compensation)**  
**(Named Plaintiff and Plaintiffs v. Defendants)**

38. The foregoing paragraphs are incorporated herein as if set forth in their entireties.



1 39. At all times relevant herein, Defendants have and continue to be  
2 "employers" within the meaning of the FLSA.

3 40. At all times relevant herein, Defendants were and are responsible for paying  
4 wages to Named Plaintiff and Plaintiffs.

5 41. At all times relevant herein, Named Plaintiff and Plaintiffs were and are  
6 employed with Defendants as "employees" within the meaning of the FLSA.

7 42. Under the FLSA, an employer must pay an employee at least one and one  
8 half times his or her regular rate of pay for each hour worked in excess of forty hours per  
9 workweek.

10 43. Defendants' violations of the FLSA include, but are not limited to: (1)  
11 unlawfully misclassifying Named Plaintiff and Plaintiffs so as to avoid paying them overtime;  
12 and (2) arbitrarily rounding averaged pay for Named Plaintiff and Plaintiffs downward.

13 44. Defendants' conduct in failing to pay Named Plaintiff and Plaintiffs properly  
14 was and is willful and was and is not based upon any reasonable interpretation of the law.

15 45. As a result of Defendants' unlawful conduct, Named Plaintiff and Plaintiffs  
16 have suffered damages as set forth herein

17 **WHEREFORE**, Named Plaintiff and Plaintiffs pray that this Court enter an Order  
18 providing that:

- 19 (a) Defendants are to be prohibited from continuing to maintain their illegal  
20 policy, practice, or customs in violation of federal wage and hour laws;
- 21 (b) Defendants are to compensate, reimburse, and make Named Plaintiff  
22 and Plaintiffs whole for any and all pay and benefits they would have  
23 received had it not been for Defendants' illegal actions, including but not  
24 limited to past lost earnings;
- 25 (c) Named Plaintiff and Plaintiffs are to be awarded, pursuant to the FLSA,  
26 liquidated damages in an amount equal to the actual damages in this case;
- 27  
28

- 1 (d) Named Plaintiff and Plaintiffs are to be awarded the costs and expenses of  
2 this action and reasonable legal fees as provided by applicable law.  
3 (e) Named Plaintiff and Plaintiffs are to be awarded all other relief this Court  
4 deems just and proper.

5 DATED this 7<sup>th</sup> day of April, 2016.

6 BARTON LAW  
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8  
9 By: /s/ Adrian L. Barton  
10 Adrian L. Barton  
11 Attorney for Plaintiff  
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